

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SENATE BILL 1266

AN ACT

AMENDING TITLE 15, CHAPTER 10, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-1225; AMENDING SECTION 11-952.01, ARIZONA REVISED STATUTES; RELATING TO SCHOOL DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 15, chapter 10, article 8, Arizona Revised Statutes,  
3 is amended by adding section 15-1225, to read:

4 15-1225. Postemployment benefits; trust accounts

5 A. IF THE GOVERNING BOARD OFFERS POSTEMPLOYMENT BENEFITS TO SCHOOL  
6 DISTRICT EMPLOYEES OR TO SPOUSES AND DEPENDENTS OF SCHOOL DISTRICT EMPLOYEES,  
7 OR BOTH, MONIES TO FUND THESE BENEFITS MAY BE DEPOSITED IN AN OTHER  
8 POSTEMPLOYMENT BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST  
9 ACCOUNT, OR BOTH. ADDITIONAL MONIES SHALL NOT BE LEGISLATIVELY APPROPRIATED  
10 SPECIFICALLY TO PROVIDE ANY POSTEMPLOYMENT BENEFITS OFFERED BY A GOVERNING  
11 BOARD.

12 B. AN OTHER POSTEMPLOYMENT BENEFITS FUND IS A CASH CONTROLLED FUND AS  
13 PROVIDED IN SECTION 15-905, SUBSECTION N. THE MONIES IN THE OTHER  
14 POSTEMPLOYMENT BENEFITS FUND ARE NOT SUBJECT TO REVERSION, EXCEPT THAT AT THE  
15 END OF FIVE YEARS OF NO ACTIVITY IN THE FUND, ANY REMAINING MONIES SHALL  
16 REVERT TO THE MAINTENANCE AND OPERATIONS FUND.

17 C. AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT ESTABLISHED PURSUANT  
18 TO SUBSECTION A OF THIS SECTION SHALL MEET ALL OF THE FOLLOWING CONDITIONS:

19 1. CONTRIBUTIONS MADE BY THE SCHOOL DISTRICT INTO THE TRUST ACCOUNT  
20 ARE IRREVOCABLE.

21 2. THE ASSETS OF THE TRUST ACCOUNT SHALL BE DEDICATED TO PROVIDING  
22 BENEFITS TO SCHOOL DISTRICT RETIREES AND THEIR BENEFICIARIES IN ACCORDANCE  
23 WITH THE TERMS OF THE POSTEMPLOYMENT BENEFITS PLAN.

24 3. TRUST ASSETS SHALL BE LEGALLY PROTECTED FROM CREDITORS OF THE  
25 SCHOOL DISTRICT OR THE INVESTMENT MANAGER PURSUANT TO SUBSECTION F OF THIS  
26 SECTION.

27 D. CURRENT OR PRIOR YEAR POSTEMPLOYMENT BENEFITS LIABILITIES MAY BE  
28 PAID FROM ANY SCHOOL DISTRICT FUND FROM WHICH A SCHOOL DISTRICT MAY PAY  
29 EMPLOYEE BENEFITS INTO THE OTHER POSTEMPLOYMENT BENEFITS FUND OR TRUST  
30 ACCOUNT. PAYMENTS FOR CURRENT OR PRIOR YEAR LIABILITIES PAID INTO THE OTHER  
31 POSTEMPLOYMENT BENEFITS FUND OR TRUST ACCOUNT SHALL BE TREATED AS AN  
32 EXPENDITURE FROM THE ORIGINATING SCHOOL DISTRICT FUND.

33 E. THE FOLLOWING EXPENDITURES MAY BE MADE FROM AN OTHER POSTEMPLOYMENT  
34 BENEFITS FUND OR AN OTHER POSTEMPLOYMENT BENEFITS TRUST ACCOUNT:

35 1. ADMINISTRATIVE AND MANAGEMENT COSTS.

36 2. PAYMENT OF BENEFITS.

37 F. AN INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST  
38 ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE EITHER:

39 1. A QUALIFIED INVESTMENT MANAGER APPOINTED BY THE DISTRICT GOVERNING  
40 BOARD.

41 2. THE MANAGER OF A PUBLIC AGENCY POOL ESTABLISHED PURSUANT TO SECTION  
42 11-952.01.

43 G. THE INVESTMENT MANAGER FOR AN OTHER POSTEMPLOYMENT BENEFITS TRUST  
44 ACCOUNT MAY INVEST AND REINVEST THE MONIES IN THE ACCOUNT AND MAY HOLD,  
45 PURCHASE, SELL, ASSIGN, TRANSFER AND DISPOSE OF ANY OF THE SECURITIES AND

1 INVESTMENTS IN WHICH ANY OF THE TRUST ACCOUNT MONIES ARE INVESTED. THE  
2 INVESTMENT MANAGER SHALL INVEST THE MONIES IN THE TRUST ACCOUNT IN THE SAME  
3 MANNER AS THE MONIES IN THE PERMANENT STATE LAND FUND PURSUANT TO SECTION  
4 35-314.01, EXCEPT THAT NOT MORE THAN THIRTY PER CENT OF THE MONIES IN THE  
5 TRUST ACCOUNT MAY BE INVESTED IN EQUITY SECURITIES AT ANY TIME. THE  
6 PERCENTAGE OF INVESTMENT SHALL BE CALCULATED AT COST.

7 H. FOR THE PURPOSES OF THIS SECTION, POSTEMPLOYMENT BENEFITS DO NOT  
8 INCLUDE BENEFITS PROVIDED BY THE ARIZONA STATE RETIREMENT SYSTEM.

9 Sec. 2. Section 11-952.01, Arizona Revised Statutes, is amended to  
10 read:

11 11-952.01. Public agency pooling of property, fidelity,  
12 liability, workers' compensation, life, health,  
13 accident and disability coverage; exemptions;  
14 board of trustees; contract; termination; audit;  
15 insolvency; definition

16 A. In addition to other authority granted pursuant to this title, two  
17 or more public agencies may enter into contracts or agreements pursuant to  
18 this article for the joint purchasing of insurance, including prepaid legal  
19 insurance or reinsurance, or to pool retention of their risks for property,  
20 fidelity and liability losses and to provide for the payment of such property  
21 loss, fidelity loss, prepaid legal insurance or claim of liability made  
22 against any member of the pool, including any elected or appointed official,  
23 officer or employee covered by the pool, on a cooperative or contract basis  
24 with one another or may jointly form a nonprofit corporation or enter into a  
25 trust agreement to carry out the provisions of this section in their behalf  
26 directly or by contract with a private party.

27 B. In addition to other authority granted pursuant to this title, two  
28 or more public agencies may enter into contracts or agreements pursuant to  
29 this article to establish a workers' compensation pool to provide for the  
30 payment of workers' compensation claims pursuant to title 23, chapter 6 on a  
31 cooperative or contract basis with one another or may jointly form a  
32 nonprofit corporation or enter into a trust agreement to carry out the  
33 provisions of this section in their behalf directly or by contract with a  
34 private party. A workers' compensation pool established pursuant to this  
35 subsection may provide coverage for workers' compensation, employers'  
36 liability and occupational disease claims. A workers' compensation pool is  
37 subject to approval as a self-insurer by the industrial commission pursuant  
38 to section 23-961, subsection A, paragraph 2 and is subject to title 23,  
39 chapter 6 and rules adopted pursuant to that chapter in addition to the  
40 requirements of this section. The industrial commission, by rule, resolution  
41 or order, may adopt requirements for the administration of a workers'  
42 compensation pool under this subsection, including separation or commingling  
43 of funds, accounting, auditing, reporting, actuarial standards and  
44 procedures.

1 C. In addition to other authority granted pursuant to this title, two  
2 or more public agencies may enter into contracts or agreements for the joint  
3 purchase of life insurance, disability insurance, accident insurance or  
4 health benefits plan insurance or may pool retention of their risks of loss  
5 for life, disability, health or accident claims made against any public  
6 agency member of the pool or to jointly provide the health and medical  
7 services authorized in section 36-2907. Public agencies may establish pools  
8 for the purposes of this subsection by any of the following methods:

- 9 1. On a cooperative or contract basis.
- 10 2. By the formation of a nonprofit corporation.
- 11 3. By contracts or intergovernmental agreements with the Arizona  
12 health care cost containment system administration.
- 13 4. By the execution of a trust agreement directly by the agencies or  
14 by contracting with a third party.

15 D. In addition to other authority granted pursuant to this title, two  
16 or more public agencies may enter into contracts or agreements pursuant to  
17 this article for the joint purchasing of insurance for property, liability or  
18 workers' compensation losses or to pool retention of their risks for property  
19 and liability loss to cover the public agency, its elected officials and  
20 employees and the contractor and subcontractor of every tier engaged in the  
21 performance of a construction project for the public agency. Public agencies  
22 may establish pools for the purpose of this subsection by any of the  
23 following methods:

- 24 1. On a cooperative or contract basis.
- 25 2. By the formation of a nonprofit corporation.
- 26 3. By the execution of a trust agreement directly by the agencies or  
27 by contracting with a third party.

28 E. Section 10-11301 does not apply to nonprofit corporations formed  
29 pursuant to this section.

30 F. Title 41, chapter 23 does not apply to the procurement of insurance  
31 or reinsurance, or to the procurement of the services provided for in  
32 subsection K, paragraph 8 of this section, by any pool established pursuant  
33 to this section.

34 G. Title 43 does not apply to any pool established pursuant to this  
35 section. Any pool established pursuant to this section is exempt from  
36 taxation under title 43.

37 H. Each pool shall be operated by a board of trustees consisting of at  
38 least three persons who are elected officials or employees of public entities  
39 within this state. The board of trustees shall notify the director of the  
40 department of insurance of the existence of the pool and shall file with the  
41 director and with the attorney general a copy of the intergovernmental  
42 agreement or contract. The attorney general shall file a copy of the  
43 agreement or contract with the secretary of state as required by section  
44 11-952. The board of trustees of each group shall do all of the following:

- 1           1. Establish terms and conditions of coverage within the pool  
2 including exclusions of coverage.
- 3           2. Ensure that all claims are paid promptly.
- 4           3. Take all necessary precautions to safeguard the assets of the  
5 group.
- 6           4. Maintain minutes of its meetings.
- 7           5. Designate an administrator to carry out the policies established by  
8 the board of trustees and to provide day-to-day management of the group and  
9 delineate in the written minutes of its meetings the areas of authority it  
10 delegates to the administrator.
- 11          6. If the pool is a workers' compensation pool, file a copy of the  
12 agreement with the director of the industrial commission.
- 13           I. If the pool includes private, nonprofit educational institutions,  
14 each private, nonprofit educational institution shall post a bond, cash  
15 deposit or other comparable financial security in an amount that is equal to  
16 at least one and one-half times the amount of the private, nonprofit  
17 educational institution's annual premium to ensure payment of the school's or  
18 institution's legal liabilities and other obligations if the pool is  
19 determined to be insolvent or is otherwise found to be unable to discharge  
20 the pool's legal liabilities and other obligations pursuant to subsection N  
21 of this section.
- 22           J. The board of trustees shall not:  
23            1. Extend credit to individual members for payment of a premium,  
24 except pursuant to payment plans established by the board.
- 25            2. Borrow any monies from the group or in the name of the group except  
26 in the ordinary course of business.
- 27           K. In addition to the requirements of section 11-952, a contract or  
28 agreement made pursuant to this section shall contain the following:  
29            1. A provision for a system or program of loss control.  
30            2. A provision for termination of membership including either:  
31            (a) Cancellation of individual members of the pool by the pool.  
32            (b) Election by an individual member of the pool to terminate its  
33 participation.
- 34            3. A provision requiring the pool to pay all claims for which each  
35 member incurs liability during each member's period of membership.
- 36            4. A provision stating that each member is not relieved of its  
37 liability incurred during the member's period of membership except through  
38 the payment of losses by the pool or by the member.
- 39            5. A provision for the maintenance of claim reserves equal to known  
40 incurred losses and an estimate of incurred but not reported claims.
- 41            6. A provision for a final accounting and settlement of the  
42 obligations of or refunds to a terminating member to occur when all incurred  
43 claims are concluded, settled or paid.
- 44            7. A provision that the pool may establish offices where necessary in  
45 this state and employ necessary staff to carry out the purposes of the pool.

1           8. A provision that the pool may retain legal counsel, actuaries,  
2 auditors, engineers, private consultants and advisors.

3           9. A provision that the pool may make and alter bylaws and rules  
4 pertaining to the exercise of its purpose and powers.

5           10. A provision that the pool may purchase, lease or rent real and  
6 personal property it deems necessary.

7           11. A provision that the pool may enter into financial services  
8 agreements with banks and other financial institutions, that it may issue  
9 checks in its own name and that it may invest its monies in equity  
10 securities, mutual funds and investment funds registered with the United  
11 States securities and exchange commission, debt obligations and any eligible  
12 investment permitted by section 35-323.

13           L. A pool or a terminating member shall provide at least ninety days'  
14 written notice of the termination or cancellation. A workers' compensation  
15 pool shall notify the industrial commission of the termination or  
16 cancellation of a member thirty days before the termination or cancellation  
17 of the member.

18           M. The pool shall be audited annually at the expense of the pool by a  
19 certified public accountant, with a copy of the report submitted to the  
20 governing body or chief executive officer of each member of the pool and to  
21 the director of the department of insurance. The board of trustees of the  
22 pool shall obtain an appropriate actuarial evaluation of the claim reserves  
23 of the pool including an estimate of the incurred but not reported  
24 claims. The department of insurance shall examine each public agency pool  
25 once every five years. The director of the department of insurance may  
26 examine a public agency pool sooner than five years from the preceding  
27 examination if the director has reason to believe that the pool is  
28 insolvent. The costs of any examination shall be paid by the pool subject to  
29 the examination.

30           N. If, as a result of the annual audit or an examination by the  
31 director of the department of insurance, it appears that the assets of the  
32 pool are insufficient to enable the pool to discharge its legal liabilities  
33 and other obligations, the director of the department of insurance shall  
34 notify the administrator and the board of trustees of the pool of the  
35 deficiency and the director's list of recommendations to abate the  
36 deficiency, including a recommendation not to add any new members until the  
37 deficiency is abated. If the pool fails to comply with the recommendations  
38 within sixty days after the date of the notice, the director shall notify the  
39 chief executive officer or the governing bodies, if any, of the members of  
40 the pool, the governor, the president of the senate and the speaker of the  
41 house of representatives that the pool has failed to comply with the  
42 recommendations of the director.

43           O. If a pool is determined to be insolvent or is otherwise found to be  
44 unable to discharge its legal liabilities and other obligations, each  
45 agreement or contract shall provide that the members of the pool shall be

1 assessed on a pro rata basis as calculated by the amount of each member's  
2 annual contribution in order to satisfy the amount of deficiency. The  
3 assessment shall not exceed the amount of each member's annual contribution  
4 to the pool.

5 P. A pool established pursuant to this section may make available  
6 programs providing for insurance coverages described in subsections A, B and  
7 C of this section to those charter schools governed by section 15-183,  
8 subsection M and, except for a workers' compensation pool, to private,  
9 nonprofit educational institutions.

10 Q. In addition to the authority set forth in this title, a pool  
11 established pursuant to this section may invest public monies on behalf of  
12 pool members, but any such investments shall be limited to those permitted by  
13 section 35-323, **EXCEPT AS PROVIDED IN SECTION 15-1225, SUBSECTION G**. A pool  
14 established pursuant to this section may not invest monies that are required  
15 by law to be deposited with a county treasurer.

16 R. A pool established pursuant to this section, by the adoption of a  
17 resolution of continuing effect, may authorize and request the state  
18 treasurer to invest funds for the pool pursuant to section 35-326.

19 S. For the purposes of this section, "health benefits plan" means a  
20 hospital or medical service corporation policy or certificate, a health care  
21 services corporation contract, a multiple employer welfare arrangement or any  
22 other arrangement under which health and medical benefits and services are  
23 provided to two or more persons.